Supreme Court, U.S.
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No. 98-1215

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

WILLIAM JAMES STAJOS d/b/a
AMERICAN EAGLE FIREWORKS, INC.,

Petitioner,

v.

CITY OF LANSING and PEOPLE OF THE
STATE OF MICHIGAN,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MICHIGAN COURT OF APPEALS

RESPONDENTS' JOINT BRIEF IN OPPOSITION

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COUNTER-QUESTION PRESENTED FOR REVIEW

I.

Did the Michigan courts properly determine that the state fireworks code was not unconstitutionally vague where its plain language and its history suggest a legislative intent to prohibit the intrastate retail sale of all but a few types of fireworks?

II.

Did the Michigan court properly determine that federal statutes and regulations which govern the composition, construction, packaging, labeling and interstate transportation of fireworks do not preempt provisions of the state fireworks code which prohibit the intrastate retail sale of all but a few types of fireworks?

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OPINIONS BELOW

The October 26, 1998 Michigan Supreme Court order denying the petitioner's motion for reconsideration is reported as *Stajos v. City of Lansing*, 459 Mich. __, 587 N.W.2d 500 (1998), and is reprinted in the Petitioner's Appendix at page 1.

The August 28, 1998 Michigan Supreme Court order denying the Petitioner's application for leave to appeal is reported as *Stajos v. City of Lansing*, 459 Mich. 851, 584 N.W.2d 588 (1998). It was not reprinted in the Petitioner's Appendix, but was subsequently filed by his counsel.

The June 10, 1997 Michigan Court of Appeals order denying the Petitioner's motion for rehearing is not reported. It was not reprinted in the Petitioner's Appendix, but was subsequently filed by his counsel.

The January 24, 1997 Michigan Court of Appeals published opinion is reported as *Stajos v. City of Lansing*, 221 Mich. App. 223, 561 N.W.2d 116 (1997), and is reprinted in the Petitioner's Appendix at pages 2 through 13.

The August 23, 1994 Ingham County Circuit Court order denying the Petitioner's motion for reconsideration is not reported.

The June 23, 1994 Ingham County Circuit Court opinion and order of declaratory judgement is not reported.

STATEMENT OF JURISDICTION

The Respondents agree with the Statement of Basis for Jurisdiction which appears at page x of the Petition for Writ of Certiorari, dated January 24, 1999.

COUNTER-STATEMENT OF THE CASE

The Petitioner, William James Stajos, owns and operates American Eagle Fireworks, Inc. (Verified Complaint, #1). He grosses approximately $150,000 per year from the retail sale of fireworks. (*Id.*, #50). He sells them from as many as eight locations within Ingham County. (*Id.*, #2). One of his stores is located at 525 East Oakland Avenue in Lansing, Ingham County, Michigan. (*Id.*, #4).

On June 17, 1993, an undercover Lansing fire marshall purchased a firework called "Space Shuttle" at the East Oakland Avenue store. He subsequently obtained a search warrant which authorized the seizure of fireworks "which either move or report when ignited". (See Search Warrant and Affidavit attached to the Verified Complaint). Police officers and fire marshalls executed the warrant and confiscated a large quantity of fireworks. (Verified Complaint, #4). No criminal charges were filed as a result of this seizure. The fireworks were destroyed. (Affidavit of Kirt Baker, #10, 11, 14).

On June 23, 1993, Stajos filed a lawsuit against the City of Lansing in the Ingham County Circuit Court. He sought, *inter alia*, declaratory and injunctive relief. He asserted that he could lawfully sell any fireworks which were not specifically banned by the state fireworks code. (Verified Complaint, #9-13). He also contended that federal regulations

preempt the state law. (*Id.*, #7). Finally, he asserted that the fireworks code was void for vagueness. (*Id.*, #36, 42-49).

The complaint included a prayer for a temporary restraining order (TRO). Following a hearing on June 28, 1993, Ingham County Circuit Judge William E. Collette issued a TRO which permitted Stajos to sell all fireworks except those which were specifically prohibited by name, i.e., firecrackers, torpedoes, skyrockets, roman candles, daygo bombs, bottle rockets, whistling chasers, and rockets on sticks. (6-28-93 Tr: 40-41; TRO, p. 1).

On or about February 3, 1994, Stajos filed a motion for additional relief. Judge Collette permitted the People of the State of Michigan, by and through the Ingham County Prosecuting Attorney, to intervene as a third party-defendant because the case at bar involved interpretation of a penal statute and because its outcome could effect pending criminal cases. (02-11-94 Stipulation and Order).[1]

Judge Collette convened an evidentiary hearing on April 8, 1994. This proceeding focused on subsections (2) and (3)

1. The prosecuting attorney charged Stajos and his wife with selling illegal fireworks at the Oakland Avenue store on June 29, June 30, and July 2 of 1993. These cases were pending before Honorable Patrick F. Cherry in the 54-A District Court. *See People v. William Stajos*, file no. 93-04708-SM; *People v. Jan Stajos*, file no. 93-04709-SM; *People v. Jan Stajos*, 93-04710-SM; *People v. William Stajos*, file no. 93-05212-SM. In addition, Stajos' son and another American Eagle employee were charged in the 55th District Court with possession of roman candles with intent to sell. Those cases stemmed from the seizure of fireworks from Stajos' Lansing Township franchise. *People v. Ronald Farhat and James Stajos*, file nos. 93-002545-SM and 93-008232-SM (Honorable Thomas E. Brennan, Jr.). (02/23/94 Tr: 10-11).

of the state fireworks code. These provisions are reprinted in the Petitioner's Appendix at pages 14 and 15. Subsection (2) covers types of fireworks that a person **may not** sell at retail, possess, or use. Subsection (2)(c) lists eight specific items: firecrackers, torpedoes, skyrockets, roman candles, daygo bombs, bottle rockets, whistling chasers, rockets on sticks, and fireworks of like construction. Subsection (2)(d) bans "Fireworks containing an explosive or inflammable compound or a tablet or other device commonly used and sold as fireworks containing [12 chemicals]". Subsection (3), on the other hand, enumerates fireworks which are *per se* legal in Michigan.

Stajos produced two expert witnesses: Glenn Qualls, a former fireworks merchant and past president of the Michigan Pyrotechnics Association, and Dr. Roger Schneider, a chemistry professor and combustible materials consultant. The court received them as experts in pyrotechnics. (4-8-94 Tr: 11, 51).

Both witnesses testified at length about the construction and function of fireworks which subsection (2)(c) specifically bans, i.e., firecrackers, torpedoes, skyrockets, bottle rockets, whistling chasers, rockets on sticks, roman candles, and daygo bombs. (4-8-94 Tr: 17, 23, 26, 44, 28-33, 55-70). They also described items which were specifically legalized by subsections (3)(a) through (3)(f), e.g., sparklers, toy snakes, toy trick noise makers, and fountains. (*Id.*, 39-40, 42-43, 79-84). The witnesses also testified about the construction and function of fireworks not specifically mentioned in the statute, such as mines, shells, wheels, ground spinners, missile-type rockets, helicopter rockets, aerial spinners, illuminating torches, and California candles. (*Id.*, 24-25, 35-37, 42-47, 84-91, 105). Stajos also introduced a trade publication, known

as American Pyrotechnic Association Standard 87-1, which classifies and defines all commonly-sold fireworks. (*Id.*, 15-16, 49-50). Mr. Qualls and Dr. Schneider testified that the United States Department of Transportation regulations have adopted APA Standard 87-1 in classifying fireworks for **interstate transportation**. (*Id.*, 15-16, 37, 58, 111-112). The federal regulations, however, do not purport to govern **intrastate** fireworks sales. (*Id.*, 112).

Dr. Schneider also testified that subsection (2)(d) is ambiguous because it is subject to two interpretations. (4-8-94 Tr: 70-71, 77). The first interpretation would ban all fireworks which contained any combination of the five anions (nitrates, fulminates, chlorates, oxilates, or sulphides) with any of the other seven materials (lead, barium, antimony, arsenic, mercury, nitro glycerine, or phosphorous). Such a statutory scheme would preclude the use of barium nitrate (which is used in all sparklers), and antimony sulphide (which is used in a variety of other fireworks). (*Id.*, 74-75). A second interpretation would ban **all** compounds involving **any** of the five anions. (*Id.*, 75). This would preclude the use of barium nitrate, antimony sulphide, and potassium nitrate. Dr. Schneider testified that potassium nitrate is used to manufacture black powder found in most fireworks, and is used in all fuses. (*Id.*, 76). Therefore, the second interpretation of (2)(d) would prohibit any firework which had a fuse. (*Id.*, 79). On cross examination, Dr. Schneider testified that the phrase at the beginning of subsection (2)(d) ["Fireworks containing an explosive or inflammable compound"] would necessarily encompass **all** fireworks. (*Id.*, 94-95). This language would be sufficient to ban **every firework**. (*Id.*, 95-96). Dr. Schneider noted that this language renders the remaining portion of the statute (which lists various anions and metals) unnecessary. (*Id.*, 96).

The defendants offered no evidence. (4-8-94 Tr: 119). Judge Collette took the matter under advisement and instructed counsel to file post-hearing memoranda. (*Id.*, 119-121). The court subsequently issued a written opinion/order. Judge Collette determined that the statute banned all fireworks except those which were specifically exempted. (6-23-94 Opinion/Order, pp. 2-4). He noted that the legislature included broad language of prohibition because it could not conceivably list every type of firework that was or would be in existence. (*Id.*, p. 4). The court also concluded that federal regulations did not preempt the state statute because the federal law governed only transportation of fireworks rather than sale. (*Id.*, pp. 4-5). Finally, Judge Collette rejected Stajos' argument that the fireworks statute was unconstitutionally vague. (*Id.*, pp. 3-4). The court dissolved the TRO. (*Id.*, p. 6). Stajos filed a motion for reconsideration, which Judge Collette denied on August 23, 1993. (Order).

Stajos filed a timely appeal in the Michigan Court of Appeals. On January 27, 1997, that court released a published opinion which affirmed Judge Collette's decision in its entirety. *Stajos v. City of Lansing*, 221 Mich. App. 223, 561 N.W.2d 116 (1997). The three judge panel concluded that the fireworks code contains "a general rule of prohibition with certain limited exceptions" regarding sale, possession and use. In other words, a person may **not** sell at retail **any** fireworks **except** those which are specifically listed in MCL 750.243a(3)(a); MSA 28.440(1)(3)(a) through MCL 750.243a(3)(f); MSA 28.440(1)(3)(f), e.g., sparklers, smoke bombs, and fountains. (Petitioner's Appendix, p. 8). This interpretation was supported by the statute's plain language and its legislative history. (Petitioner's Appendix, pp. 4-8). The panel adopted this interpretation even though it rendered a portion of the statute meaningless because it did far less

harm to the statute as a whole than would the interpretation proposed by Stajos. (Petitioner's Appendix, pp. 7-8). The court of appeals further held that federal regulations, which legalize/classify fireworks for **transportation** purposes, do not preempt the Michigan statute, which purports to govern their retail sale, possession, and use. (Petitioner's Appendix, p. 9). Finally, the panel determined that the fireworks code was not unconstitutionally vague. (Petitioner's Appendix, pp. 12-13). The Michigan Court of Appeals subsequently denied Stajos' motion for rehearing.

Stajos then filed an application for leave to appeal in the Michigan Supreme Court. The state supreme court denied this application as well as a subsequently-filed motion for reconsideration.

REASONS FOR DENYING THE WRIT

I.

THE MICHIGAN COURTS PROPERLY DETERMINED THAT THE STATE FIREWORKS CODE WAS NOT UNCONSTITUTIONALLY VAGUE WHERE ITS PLAIN LANGUAGE AND ITS HISTORY SUGGEST A LEGISLATIVE INTENT TO PROHIBIT THE INTRASTATE RETAIL SALE OF ALL BUT A FEW TYPES OF FIREWORKS.

The Petitioner contends that the Michigan Courts erred in declining to declare the state fireworks statute unconstitutional. He elaborates that the statute is void for vagueness pursuant to the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

This Court reiterated the appropriate standards in *Kolender v. Lawson*, 461 U.S. 352, 357, 75 L. Ed. 2d 903, 909 (1983):

> As generally stated, the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. [Citations omitted].

In evaluating a vagueness claim, this Court views the statute as applied to the petitioner's conduct. His challenge will fail if the statute is clear and definite as applied to him, regardless of how it might affect others. *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 495, 71 L. Ed. 2d 362, 369 (1982). Economic regulations are subject to a less strict vagueness test because businesspeople, unlike ordinary citizens, are expected to familiarize themselves with laws that govern their ventures. *Id.*, 455 U.S. at 498, 71 L. Ed. 2d at 371. Moreover, this Court must consider statutory interpretations rendered by the state appellate courts. *Kolender*, 461 U.S. at 355, 75 L. Ed. 2d at 908. If statutory language is sufficiently clear vis-a-vis the petitioner, this Court will uphold the law even though some confusion exists regarding its enforcement. *Hoffman Estates*, 455 U.S. at 503, 71 L. Ed. 2d at 375.

Stajos filed his original declaratory judgement action in his capacity as a high-volume fireworks retailer. (Verified Complaint, #1, 2, 4, 50). The evidence adduced at trial was confined to the state statute's application to the retail sale, possession, and use of fireworks within the State of Michigan.

His vagueness challenge must fail because the statute provides adequate notice of the types of fireworks he may and may not sell to retail customers.

The statute defines "fireworks" as

> a device made from explosive or flammable compositions used primarily for the purpose of producing a visible display or audible effect, or both, by combustion, deflagration, or detonation. MCL 750.243a(1)(a); MSA 28.440(1)(a)(1). (Petitioner's Appendix, p 14).

Stajos has never challenged this general definition. Nothing in the trial evidence suggests that it is inaccurate or obsolete. In fact, the statutory definition closely resembles the American Pyrotechnic Association standards which Stajos offered into evidence.

The stader provisions which govern the retail sale of fireworks appear at MCL 750.243a; MSA 28.440(1)(a), and are reprinted in the Petitioner's Appendix at pages 14 through 15:

> (2) Except as provided in subsection (3) and sections 243b, 243c and 243d a person, firm, partnership, or corporation shall not offer for sale, expose for sale, **sell at retail, keep with intent to sell at retail**, possess, give, furnish, transport, use, explode, or cause to explode any of the following:
>
> * * *

> (c) Firecrackers, torpedoes, skyrockets, roman candles, daygo bombs, bottle rockets, whistling chasers, rockets on sticks, or other fireworks of like construction.
>
> (d) Fireworks containing an explosive or inflammable compound or a tablet or other device commonly used and sold as fireworks containing nitrates, fulminates, chlorates, oxalates, sulphides of lead, barium, antimony, arsenic, mercury, nitro glycerine, phosphorus, or a compound containing these or other modern explosives.

(Emphasis added). Violation of this statute constitutes a misdemeanor. MCL 750.243e; MSA 28.440(5). Read together, subsections (2)(c) and (2)(d) state that, unless an exception applies, an individual **cannot** sell or expose for sale (1) firecrackers; (2) torpedoes; (3) skyrockets; (4) roman candles; (5) daygo bombs; (6) bottle rockets; (7) whistling chasers; (8) rockets on sticks; (9) fireworks of like construction; (10) any other fireworks which contain an explosive or inflammable compound; and/or (11) any device commonly used and sold as fireworks which contains certain chemicals.

Standing alone, subsections (2)(c) and (2)(d), above, prohibit the sale of all fireworks. Stajos' expert witness, Dr. Schneider, confirmed that the phrase "[f]ireworks containing and explosive or inflammable compound" encompasses all fireworks (4/8/94 Tr: 94-95). He added that most fireworks contain antimony sulfide and/or potassium nitrate. (*Id.*, 75-76).

Subsequent provisions of the fireworks code contain three exceptions. First, MCL 750.243a(3)(a); MSA 28.440(1)(3)(a) through MCL 750.243a(3)(f); MSA 28.440(1)(3)(f) list six types of fireworks that are never illegal to sell. They include paper caps, toy guns, sparklers, flitter sparklers, toy snakes, fountains, and signal flares. Second, MCL 750.243a(3)(g); MSA 28.440(1)(3)(g) permits "The sale of fireworks, provided they are to be shipped directly out of state . . ." Third, a person may obtain a permit from the governing body of a municipality to do business as a "resident wholesale dealer or jobber". Such a person may sell non-exempt fireworks only to persons or organizations who have also received municipal permits to display them at county fairs or other celebrations. MCL 750.243b(1); MSA 28.440(2)(1); MCL 750.243b(2); MSA 28.440(2)(2).

The Michigan Court of Appeals concluded that: "A fair review of the fireworks statute reveals a general prohibition with certain limited exceptions." (Petitioner's Appendix, p. 8).[2] Law enforcement officials can reasonably conclude that fireworks are illegally possessed if (1) they are not specifically exempted by name; (2) they are not being held for direct out-of-state shipment; and (3) the person possessing them does not hold a permit to do business as a resident wholesaler.

The statute, as interpreted by the state courts, prohibits the retail sale of **all** fireworks **except** those which are specifically listed in subsections (3)(a) through (3)(f). The list of so-called "Michigan-legal" fireworks is not vague because Stajos presented two expert witnesses who were able

2. This Court lacks authority to adopt a different interpretation. *Johnson v. Fankell*, 520 U.S. 911, 117 S. Ct. 1800, 1804, 138 L. Ed. 2d 108, 115 (1997).

to describe these items. (4-8-94 Tr: 39-40, 42-43, 79-84). In addition, trade publications exist which also describe and define them. The existence of this information clearly vitiates Stajos' vagueness claim.

II.

THE MICHIGAN COURTS PROPERLY DETERMINED THAT FEDERAL STATUTES AND REGULATIONS WHICH GOVERN THE COMPOSITION, CONSTRUCTION, PACKAGING, LABELING AND INTERSTATE TRANSPORTATION OF FIREWORKS DO NOT PREEMPT PROVISIONS OF THE STATE FIREWORKS CODE, WHICH PROHIBIT THE INTRASTATE RETAIL SALE OF ALL BUT A FEW TYPES OF FIREWORKS.

Stajos argues that the state courts erred in ruling that certain federal statutes and regulations did not preempt the Michigan fireworks code. He maintains that the state law recognizes fireworks classifications that contradict federal standards.

The federal preemption doctrine stems from the Supremacy Clause in Article VI of the United States Constitution. *Fidelity Federal Savings & Loan Ass'n v. De La Cuesta*, 458 U.S. 141, 152, 73 L. Ed. 2d 664, 675 (1982). It provides that federal law preempts a state statute only if: (1) the federal rule so completely occupies a field of legislative activity that no potential for supplemental state regulation exists; or (2) enforcement of the state statute would directly conflict with, or frustrate the intent of, the federal rule. *Barnett Bank of Marion County v. Nelson*, 517 U.S. 25, __, 134 L. Ed. 2d 237, 244 (1996); *Cipollone v. Liggett*

Group, Inc., 505 U.S. 504, 516, 120 L. Ed. 2d 407, 423 (1992); *Fidelity Federal*, 458 U.S. at 152, 73 L. Ed. 2d at 675. Preemption can be explicit or implicit. In addition, federal regulations may have preemptive effect. *Fidelity Federal, supra.*

The statutes and regulations cited by Stajos do not preempt provisions of the Michigan fireworks code which (severely) restrict the types of items which may be sold at retail within the state. The United States Congress and the federal regulatory agencies never intended to govern intrastate retail sale.

The Respondents readily concede that the Consumer Product Safety Commission (CPSC) and Department of Transportation (DOT) possess jurisdiction to regulate fireworks. Congress created the CPSC in 1972 after finding that, *inter alia*, "an unacceptable number of consumer products which present unreasonable risks of injury are distributed in commerce", 15 U.S.C. § 2051(1)(1), and that "regulation of consumer products the distribution or use of which affects interstate or foreign commerce is necessary . . ." 15 U.S.C. § 2051(a)(6). The CPSC received statutory authority to regulate fireworks. 15 U.S.C. § 2052(1). The Commission's duties include promulgation of product safety standards. 15 U.S.C. § 2056(a). Once a federal safety standard is adopted, the states may not adopt or enforce their own requirements regarding "the performance, composition, contents, design, finish, construction, packaging, or labeling of" the product involved. 15 U.S.C. § 2075(a).

The CPSC possesses alternative jurisdiction over fireworks pursuant to federal statutes which govern hazardous substances, 15 U.S.C. §§ 1261, *et seq*. A "hazardous substance" is defined as:

> Any substance or mixture of substances which . . . (v) is flammable or combustible, or (vi) generates pressure through decompression, heat, or other means, if such substances or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use . . .

15 U.S.C. § 1261(f)(1)(A). This definition obviously encompasses fireworks. 15 U.S.C. § 1261(q)(1), *United States v. Chalaire*, 316 F. Supp. 543, 546-547 (E.D. La. 1970); *United States v. 7 Cases of Cracker Balls*, 253 F. Supp. 771, 773 (S.D. Texas 1966). The CPSC may promulgate regulations to classify hazardous substances, 15 U.S.C. § 1269(a), or to ban them from interstate commerce, 15 U.S.C. § 1263(a).

The CPSC has adopted numerous fireworks regulations. The Commission has banned several items from commerce, including most fireworks which contain more than two grains of pyrotechnic material, firecrackers which contain over 0.772 grains of pyrotechnic material, aiel bombs, and items which contain any of 11 forbidden chemicals. 16 C.F.R. 1500.17(a)(3); 16 C.F.R. 1500.17(a)(8); 16 C.F.R. 1500.17(a)(9); 16 C.F.R. 1507.1; 16 C.F.R. 1507.2. In addition, Part 1507 governs the construction and composition of fuses, bases and launching tubes, as well as specific devices such as smoke bombs and rockets on sticks. *See* 16 C.F.R. 1507.1, *et seq*. The CPSC has also promulgated strict labeling requirements for 15 items, including roman candles, rockets on sticks, and mines and shells. The labels must include safety instructions. 16 C.F.R. 1500.14(b)(7).

Meanwhile, the federal DOT regulates fireworks pursuant to the so-called "Haz-Mat" statutes, which were enacted to "provide adequate protection against the risks to life and property inherent in the transportation of hazardous material in commerce. . ." 49 U.S.C. § 5101. Congress defined "commerce" to mean trade between states. 49 U.S.C. § 5102(1)(A). The term "transportation" includes the movement of hazardous materials and incidental storage. 49 U.S.C. § 5102(12). The Secretary of Transportation possesses the authority to designate explosive or flammable materials as "hazardous" when he or she "decides that transporting the material in commerce in a particular amount and form may pose an unreasonable risk to health and safety or property." 49 U.S.C. § 5103(a). The Secretary is further empowered to "prescribe regulations for the safe transportation of hazardous material in intrastate, interstate, and foreign commerce." 49 U.S.C. § 5103(b).

The DOT has classified fireworks as "hazardous materials", and has promulgated specific requirements regarding shipping papers, package markings, labeling, and placarding while in transit. 49 C.F.R. 172.1; 49 C.F.R. 172.101 (Table). Their classification depends on the projection and/or explosion hazard which each item presents. 49 C.F.R. 172.50(b). The DOT has banned certain types of fireworks from transportation. 49 C.F.R. 172.54(g) through 49 C.F.R. 172.54(I),

The Haz-Mat statutes contain the following preemption clause:

> Except as provided in subsection (c) of this section and unless authorized by another law of the United States, a law, regulation, order, or other

requirement of a State, political subdivision of a State, or Indian tribe about any of the following subjects, that is not substantially the same as a provision of this chapter or a regulation prescribed under this chapter, is preempted:

> (A) the designation, description, and classification of hazardous material.
>
> (B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.
>
> (C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.
>
> (D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.
>
> (E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

15 U.S.C. § 5125.

Nothing in any of the above-mentioned federal statutes and regulations evinces an intent to regulate the intrastate retail sale of fireworks. The federal provisions are limited to construction, composition, classification, packaging, labeling, and transportation of the items. One of Stajos' expert witnesses agreed that these rules do not govern intrastate sale of fireworks. (4/8/94 Tr: 112). The federal government has neither attempted nor intended to regulate this area.

Moreover, the following provision in the federal criminal code strongly suggests a Congressional intent to avoid non-transportation-related fireworks activity:

> Whoever, otherwise than in the course of continuous interstate transportation through any State, transports fireworks into any State, or delivers them for transportation into any State, or attempts so to do, knowing that such fireworks are to be delivered, possessed, stored, transhipped, distributed, sold, or otherwise dealt with in a manner or for a use prohibited by the laws of such State specifically prohibiting or regulating the use of fireworks, shall be fined under this title or imprisoned not more than one year, or both.
>
> * * *
>
> **In the enforcement of this section, the definition of fireworks contained in the laws of the respective States shall be applied.**

(Emphasis added). 18 U.S.C. § 836. The above-quoted statute was construed in *Cohen v. Bredehoeft*, 290 F. Supp. 1001 (S.D. Tex. 1968), *aff'd*, 402 F.2d 61 (CA 5 1968), *cert. den.*,

393 U.S. 1086, 21 L. Ed. 2d 779 (1969). The plaintiff sought to enjoin the enforcement of an ordinance which prohibited all fireworks within the City of Houston. He argued that federal DOT regulations preempted the city ordinance. In rejecting this argument, the court noted:

> Certain Federal statutes and regulations prescribe rules governing transportation, packaging and labeling of fireworks shipped in interstate commerce. A careful examination of these provisions convinces me that there is no conflict between the ordinance and the Federal statutes and regulations. [citations omitted]. **Moreover, there is no reason to suppose that Congress intended to preempt the states from legislating in this area. On the contrary, 18 U.S.C. Sec. 836 indicates an intent to encourage state legislation regulating fireworks**.

(Emphasis added). 290 F. Supp. at 1104.

Stajos admits that a state may regulate the intrastate retail sale of fireworks, but may not impose labeling, classification and design requirements which contradict the CPSC and DOT regulations. (Petition for Certiorari, p. 20). This argument differs slightly from the claim he made in his original lawsuit, where he asserted that he could stock and sell **all** USDOT-approved fireworks not specifically banned by state stature. (Verified Complaint, #9, 10, 11).

The heart of Stajos' preemption argument is that the Michigan statutes recognizes "Class B" and "Class C" fireworks which do not comport with any federal classifications or categories. Assuming, *arguendo*, that this argument is correct, Stajos lacks standing to raise it.

The Respondents concede that the Michigan fireworks code creates "Class B" and "Class C" fireworks. MCL 750.243a(1)(b); MSA 28.440(1)(1)(b); MCL 750.243a(1)(c); MSA 28.440(1)(1)(c). (Petitioner's Appendix, p. 14). These state classifications do not correspond with any CPSC or DOT regulations. Nevertheless, they do not govern retail activity. Rather, they apply only to on-site fireworks storage by licensed wholesalers or jobbers. MCL 750.243d(b); MSA 28.440(4)(b). The introductory paragraph to this statute specifically excludes retailers from the storage requirements. MCL 750.243d; MSA 28.440(1).

As stated previously, Stajos filed his declaratory judgement lawsuit in his capacity as a **retailer**. He offered no evidence that he conducted business as a wholesaler, or that he was licensed to do so. The City of Lansing produced evidence that Stajos **did not** possess a wholesale license. (Affidavit of Kirt Baker, #6). Therefore, he lacks standing to raise the preemption claim. This Court has recognized that a plaintiff in a civil action "must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Warth v. Seldin*, 422 U.S. 490, 499, 45 L. Ed. 2d 343, 355 (1975). This doctrine applies with equal force to certiorari petitioners. *See Trans World Airlines v. Thurston*, 469 U.S. 111, 119, n.14, 83 L. Ed. 2d 523, 532 (1985). Moreover, this Court does not adjudicate strictly academic issues. *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70, 74, 99 L. Ed. 897, 901 (1955).

CONCLUSION

This Court should deny Stajos' petition for a writ of certiorari. The litigation in the state courts focused on the validity and effect of Michigan's fireworks code as applied to intrastate retail activity. The state law is not unduly vague because its plain language prohibits the retail sale of all but a few specified items. Federal regulations promulgated by the Consumer Product Safety Commission and the Department of Transportation do not preempt the Michigan stature's provisions regarding retail sale of fireworks. Stajos has failed to present an important federal question worthy of this Court's consideration, pursuant to Rule 10(c).

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